

Remarks**Telephonic Interview**

Examiner Jennifer Steele and Primary Examiner Elizabeth Cole are thanked for the personal interview held with my colleague William F. Smith on August 8, 2007. It is believed that the accompanying remarks reflect the discussion held at the interview.

Objection to the Specification

The examiner has objected to changes made on pages 5, 7 and 8 of the substitute specification filed April 16, 2007. At page 5, sentence bridging pages 5-6, applicants changed the language to read "The typical FR coating resin is clear or translucent latex...." As discussed at the interview, it was believed that using resin in conjunction with latex in this context was redundant since a latex contains a resin. Since the original disclosure of this application describes that FR coatings can be resinous or non-resinous, it is not seen that changing the language of this sentence in this manner is new matter. Rather, it merely clarifies that this portion of the specification is describing an embodiment that uses a FR coating that is resinous by dint of use of a latex. If the examiner prefers that the original language be retained, applicants will reinstate the original text.

The examiner notes that the second full paragraph on page 7 of the substitute specification submitted on April 16, 2007, still recites that "FR resin latex." That portion of the substitute specification is amended to maintain consistency with the original disclosure that one embodiment described in the original disclosure is where the FR coating comprises a binder latex and FR material.

The examiner also notes that the phrase "FR resin" appears at page 8 of the substitute specification. Upon review, it is seen that this phrase should also be changed to read "FR coating." The change is made above.

In considering these issues, the examiner is asked to keep in mind that the original disclosure of this application described that the FR coating may be resinous or non-resinous and that the materials described in the specification that were obtained from Glo Tex are non-resinous. The changes made to the specification have been made to ensure the disclosure is consistent with these facts.

If there are any remaining issues in regard to the amendments to the specification, the examiner is urged to telephone the undersigned so that the issues can be discussed and promptly resolved.

Rejection Under 35 U.S.C. § 112, First Paragraph (written description)

Compliance with the written description requirement of 35 U.S.C. § 112, first paragraph, is a question of fact and must be assessed on a case-by-case basis. *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1561, 19 USPQ2d 1111, 1116 (Fed. Cir. 1991). It is settled law that the original disclosure of a patent application need not describe the claimed subject matter in issue in *hac verba*. *Fujikawa v. Wattanasin*, 93 F.3d 1559, 1570, 29 USPQ2d 1895, 1904 (Fed. Cir. 1996). However, the original disclosure of the patent application must convey with reasonable clarity to those skilled in the art that the inventor was in possession of the invention now claimed. *Vas-Cath Inc.*, 935 F.2d at 1563-64, 19 USPQ2d at 1116-17. In other words, one skilled in the art must reasonably discern the claim limitation at issue from reading the original disclosure of the patent application. *Waldemar Link GMBH & Co. v. Osteonics Corp.*, 32 F.3d 556, 558, 31 USPQ2d 1855, 1857 (Fed. Cir. 1994).

The examiner rejects claim 1 under this section of the statute stating that the specification “lacks support for the broad fibers claimed” and the “exclusive language of inherent FR fibers are only inherent FR polyester and inherent FR rayon.” FR, page 3.

The examiner’s concern in both regards was clarified during the interview to be the language added to claim 1 in the response of April 16, 2007 that states “wherein any

inherent FR fiber in the article is selected from the group consisting of inherent FR polyester, inherent FR rayon and mixtures thereof.” It was discussed at the interview that this language finds support in the original disclosure in that the specification states that inherent FR fibers can be an optional component of the nonwoven article. Since claim 1 was and is “comprising” in nature, the nonwoven article can contain fibers other than those specified in the body of the claim. The claim was amended so that it now requires that if the nonwoven article contains inherent FR fibers, those FR fibers are selected from the group consisting of inherent FR polyester, inherent FR rayon and mixtures thereof.

This provision enjoys written description in the original disclosure since the application as filed described the optional inherent FR fibers and the amendatory claim language specifies what inherent FR fibers may be present in the nonwoven article of claim 1.

Withdrawal of the rejection is courteously solicited.

Rejection under 35 U.S.C. § 112, second paragraph

The examiner rejects claim 1 under this section of the statute since claim 1 does not “disclose an inherent FR fiber” so that the “reference to inherent fiber is indefinite.” *In* FR, page 4.

Definiteness of claim language “must be analyzed—not in a vacuum, but always in light of the teachings of the prior art and of the particular application disclosure as it would be interpreted by one possessing the ordinary level of skill in the pertinent art.” *In re Moore*, 439 F. 2d 1232, 1235, 169 USPQ 236, 238 (CCPA 1971).

It was clarified during the interview that this rejection is an adjunct to the written description rejection discussed above. When claim 1 is read in light of the specification, the metes and bounds of the claim are readily determined. As discussed above, claim 1 is “comprising” in nature and open to the presence of inherent FR fibers. The amendatory

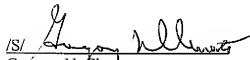
language added in the response received April 16, 2007, specified that, if inherent FR fibers are used, they are selected from the group consisting of inherent FR polyester, inherent FR rayon and mixtures thereof. The scope of the claim is clear.

Withdrawal of the rejection is courteously solicited.

Summary

It is believed that the objection to the specification and the rejections of claim 1 under 35 U.S.C. § 112, first paragraph (written description) and § 112, second paragraph, have been resolved. The examiner is asked to confirm this so the prior art rejections can be addressed. If the examiner needs any further information or has any questions, she is asked to telephone the undersigned at the listed number.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregory N. Clements", is written over a horizontal line.

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